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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,276	11/08/2001	Sara J. Trenhaile	5605USA	2725
30173	7590	08/29/2005	EXAMINER	
GENERAL MILLS, INC.			BORISSOV, IGOR N	
P.O. BOX 1113			ART UNIT	
MINNEAPOLIS, MN 55440			PAPER NUMBER	
			3639	

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,276

Applicant(s)

TRENHAILE ET AL.

Examiner

Igor Borissov

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-21 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-21 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Amendment received 6/13/2005 is acknowledged and entered. Claims 1-11 and 22-32 have previously been canceled. Claim 12 has been amended. Claims 12-21 and 33 are currently pending in the application.

Claim Rejections - 35 USC § 101

Claim Rejections under 35 USC § 101 have been withdrawn due to the applicant's amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Haefner et al. (US 6,532,420).

Claim 14. Haefner teaches a system for production of animal feed, comprising a processor and a database, wherein said processor is configured to calculate cost characteristics of ingredients and compare the cost of actual blend to the cost of existing (model) feedstuff (C. 4, L. 21-27). Language as to “which, based on the desired mix and source bin designationscalculates a blend cost and compares said blend cost” Indicates intended use of the system and does not recite a structural limitation. Therefore, said language is given no patentable weight. MPEP 2106 (II) (C) states:

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"Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation."

Claims Directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 528-531 (CCPA 1959).

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (bd Pat. App. & Inter. 1987).

Thus the structural limitations of Claim are disclosed in as described herein. Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

Claims 15-21. See reasoning applied to Claim 14.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haefner et al. in view of Kimle et al. (US 2005/0004809 A1).

Claim 12. Haefner teaches a method for production of animal feed, comprising: calculating cost characteristics of ingredients used in formulating animal feed output and cost of actual blend (C. 5, L. 45-49); comparing the cost of actual blend to the cost of existing (model) feedstuff and selecting said ingredients based on said comparing to achieve an end product (C. 5, L. 50-67; TABLE 1).

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Haefner does not specifically teach that said cost-related data is time-sensitive data and related to the current market cost of at least one ingredient.

Kimle teaches a method and system for facilitating the contracting of agricultural products using the Internet is used for providing food processing companies (buyers) and grain producers (sellers) with real time information relating to the type and amount of agricultural products available for contract [0030], wherein pricing for the quantity and types of agricultural products available for contract are displayed in real time (Abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haeffner to include that said cost-related data is time-sensitive data and related to the current market cost of at least one ingredient as disclosed in Kimle, because it would advantageously allow to maximize profit by adjusting product recipe to include the best priced ingredients at the moment.

Claim 13. Said method wherein said ingredients include bean clusters (grains) (C. 10, L. 8).

Claim 33. See reasoning applied to claim 12.

Response to Arguments

Applicant's arguments with respect to Claims 12-21 and 33 have been considered but are moot in view of the new ground(s) of rejection.

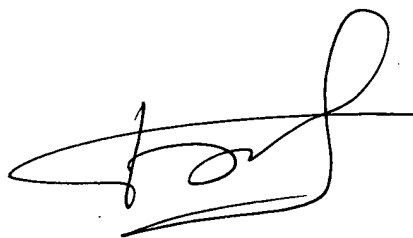
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Igor Borissov
Patent Examiner
Art Unit 3639

A handwritten signature in black ink, appearing to read 'Igor Borissov', with a large, stylized loop at the end.

IB

8/20/2005